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Attorney's Patent No: A-2645

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By: _____

Date: November 11, 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applic. No. : 09/775,041
Inventor : Daniel Flament
Filed : February 1, 2001
TC/A.U. : 3724
Examiner : Omar Flores Sanchez
Customer No.: 24131

Confirmation No.: 8338

Hon. Commissioner for Patents
Alexandria, VA 22313-1450

2004 NOV 19 7:11:55

DIVISION

PETITION UNDER 37 C.F.R. 1.181 AND
REQUEST FOR REFUND

Sir:

Appellants respectfully request that the *Substitute Brief on Appeal* filed May 28, 2004 be accepted as proper and the amount of \$1,530.00 for a four-month extension fee submitted with a *Substitute Brief on Appeal* on October 13, 2004 be refunded to counsel for the following reasons.

Background:

- Appellants submitted a *Notice of Appeal* on December 22, 2003, which was filed in the PTO on December 29, 2003.
- A *Brief on Appeal* was timely submitted within two months from the date of submission of the *Notice of Appeal*, and filed in the Patent Office on February 23, 2004.

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- Appellants see no reason why, if multiple claims contain the same feature which is believed to be patentable, the same argument cannot be repeated, with separate headings, as was done in this appeal.
- In addition, the Examiner has stated in the Office communication dated September 24, 2004 that the period for response continues from the mailing date of the Notification of Non-Compliance, May 13, 2004. Appellants believe that this requirement is not justified for two reasons: (1) The *Substitute Brief on Appeal* submitted on May 26, 2004 constitutes a good faith effort by appellants to comply with the Notification of Non-Compliance; (2) The Office communication dated September 24, 2004 was issued almost four (4) months after the *Substitute Brief on Appeal* had been received by the Patent Office on May 28, 2004. It is unconscionable to require appellants to be burdened with the extension fee when the Office could have notified appellants soon after receiving the *Substitute Brief on Appeal* on May 28, 2004.
- Finally, it is noted that the requirement for the item "grouping of claims" in the brief, as per 37 CFR 1.192(c)(7), has been deleted from the new rule 37 CFR 41.37, which replaces the old rule 37 CFR 1.192.

In view of the foregoing, counsel respectfully requests that the amount of \$1,530.00 be credited to counsel's Deposit Account No. 12-1099 of Lerner and Greenberg, P.A.

Respectfully submitted,



For Appellants

WERNER H. STEMER
REG. NO. 34,956

Date: November 11, 2004

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